

## **REMARKS**

This is a full and timely response to the non-final Office Action mailed June 29, 2007. The Office Action allowed claims 20 and 31 and rejected claims 15-19, 28-30, and 32-25. After entry of the present amendment, claims 15-17, 19-20, and 28-41 are pending in the application. Claim 18 has been cancelled. Claims 15-17, 19, 28-30, and 32-35 have been amended to further clarify the invention claimed in claims 15-17, 19, 28-30, and 32-35. New claims 36-41 have been added and are fully supported by pages 8-10 of the specification. No new matter has been added. Consideration of the enclosed amendments and remarks is requested, and Applicants respectfully submit that the claims are now in condition for allowance and request that all rejections be withdrawn.

### **I. REJECTION OF CLAIMS 15-19, 28-30, AND 32-35 UNDER § 112**

The Office Action rejected claims 15-19, 28-30, and 32-35 under 35 U.S.C. § 112, second paragraph, “as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.” The Office Action states that “there is no functional relationship between the components of claim 15 and the components of its parent claim 16[, and the s]cope of limitation of claims 16 and 15 is not clear.” The Office Action also states that claims are defective because they “merely recite communicating and passing information between servers[, that n]o meaning result or operation is seen from the claims[, and i]t is not seen how deriving state information is related to computing a weighted average.”

Applicants respectfully submit that the interpretation advanced in the Office Action did not account for recited claim limitations. The Office Action disregarded the limitation of “deriving state information . . . using a paradigm (“LTP”) and includes polling said network device and using responses received from said network device to compute a weighted average.”

However, claims 15, 16, 28, and 29 have been amended to further clarify the invention claimed in claims 15, 16, 28, and 29.

Claims 15 and 16 have been amended. Independent claim 16 now recites “deriving state information from said network device by polling each said at least one network device, receiving a response from each said at least one network device, and computing a weighted average over a plurality of time periods using responses received from said at least one network device.” Claim 16, as amended, clarifies the recited system and provides both scope and function beyond “communicating and passing configuration information between servers.” Claim 16 now recites multiple system elements and calculating a weighted average based on responses that the recited system requests.

Claim 15 has been amended to clarify the relationship of the network structure recited in claim 15 to that of claim 16, reciting a network hub server that “includes means for deriving state information from said at least one network device by polling said at least one network device, receiving a response from said at least one network device, and computing a weighted average over a plurality of time periods using responses received from said at least one network device when said remote network server is inoperable.” Claim 15, therefore, recites a network hub server capable of the same functionality, if the remote network server is inoperable, to derive state information of at least one network device as the remote network server recited in claim 16. Claims 17, 19, and 32-33, which depend from claim 16 and contain the same limitations as amended claim 16, have also been amended to conform to the subject matter as amended claim 16. Applicants, therefore, respectfully submit that claims 15-

17, 19, and 32-33, as amended, are now in condition for allowance and request that the rejection be withdrawn.

The Office Action rejected claims 28 and 29 for the “similar defects” as those discussed above with respect to claims 15 and 16. Claims 28 and 29 have been amended in accordance with claims 15 and 16. For the reasons discussed above with regard to claims 15 and 16, the Applicants respectfully submit that claims 28 and 29, as amended, are allowable. The Office Action also states that “[i]t is not clear in what order, with respect to the steps of parent claim 29, the steps of the dependent claim are executed.” Applicants respectfully submit that there is no requirement for an order of execution for the elements of claim 29 with respect to claim 28. However, claim 29 has been amended and states a direct relationship to the functionality and steps of claim 28. Claim 29 recites a network hub server with the same functionality as the remote network server recited in claim 28, and which may execute that functionality if the recited remote network server is inoperable. Claims 30 and 34-35, which depend from claim 28 and include the limitations of claim 28, have also been amended to conform to the subject matter of claim 28, as amended. Applicants, therefore, respectfully submit that claims 28-30 and 34-35, as amended, are now in condition for allowance and request that the rejection be withdrawn.

**I. REJECTION OF CLAIMS 15-16 AND 28-29 UNDER § 103(a)**

The Office Action rejected claims 15 and 16 and claims 28 and 29 as unpatentable over Majkowski, U.S. Patent No. 6,564,336 (*Majkowski*). The Office Action states that the claim element “said network device using a paradigm (“LTP”) that includes polling” is “inherent in any monitoring system, the TSS of Majkowski is capable of initiating communication with the database so as to obtain state information of the database.” *Majkowski*, as cited by the Examiner, simply describes the TSS monitoring a primary and a secondary database to determine whether or not the databases are active and switches between them should one fail. (col. 2, lines 21-23.) However, polling, receiving a response, and computing a weighted average for multiple periods, as recited in the claims 15 and 16, are not stated in *Majkowski*, nor are they inherent or obvious from the teachings in *Majkowski*. *Majkowski* teaches periodically copying database content and monitoring whether a database network element is active, but does not receive data responses from the database or perform any calculations based on the responses.

The Office Action further states that “Majkowski does not disclose using responses received from the network device to compute a weighted average over a plurality of time period. It would have been obvious to a person of ordinary skill in the art to use different algorithms as needed, such as weighted average, to analyze the data obtained from monitoring the network device such that the purpose of monitoring the device can be achieved.” Such an argument is circular. Applicants respectfully submit that claims 15 and 16, as amended, as stated above, do more than monitor the state of a network element. Claims 15 and 16 recite computing a weighted average and deriving state information for an entire network for multiple polling periods based on the responses to the polling from the network elements. The Office Action has not provided a reasonable purpose for expanding *Majkowski*, the only reference cited, to account

for using polling responses, over a time period, to compute a weighted average for multiple polling periods. There would be no purpose for such a calculation in the system of *Majkowski*, and, therefore, there is no support for the expansion of its teachings necessary to create an obviousness objection.

Claim 15 was also rejected for the same reasons, but, as amended, provides functionality not included in *Majkowski*. The arguments with respect to the calculations and deriving state information in claim 16 are equally applicable to claim 15. In addition, claim 15 recites that the network hub server in communication with the remote network server has the same functionality as the remote network server to derive state information by polling at least one network device, receiving a response, and calculating a weighted average when the remote network server is inoperable. This interoperability is not taught by *Majkowski*, nor is there reasonable support to expand *Majkowski* for an obviousness rejection. The interoperability of the recited hub and remote network servers, which the examiner cites are taught by the TSS server of *Majkowski*, would not serve any purpose in *Majkowski* because its TSS server simply monitors two databases to determine whether or not they are active. It does not poll the databases or receive any responses on which it performs calculations to compile periodic state information.

Dependent claims 17 and 32-33 were amended to conform to the subject matter of claim 16 as amended, and consideration of the arguments above is requested for these claims as well. In addition, and as explained above, *Majkowski*, does not teach deriving state information by polling and/or querying a network device or by calculating a weighted average.

The Office Action rejected claims 28 and 29 for the same reasons as stated for the rejection of claims 15 and 16. Claims 28 and 29 have been amended, in accordance with the amendments to claims 15 and 16, and the above arguments are equally applicable. Applicants

respectfully submit, therefore, for the reasons set forth above, that claims 28 and 29, as amended, are in condition for allowance and request that the rejection be withdrawn.

Dependent claims 30 and 34-35 were amended to conform to the subject matter of claim 28 as amended, and consideration of the arguments above is requested for these claims as well. In addition, and as explained above, *Majkowski*, does not teach deriving state information by polling and/or querying a network device or by calculating a weighted average.

For the reasons stated above with respect to claims 15, 16, 28, and 29, Applications respectfully submit that all claims are now in condition for allowance and request withdrawal of the rejection.

**CONCLUSION**

Claims 15-17, 19-20 and 28-41 are pending, and claims 15-17, 19, and 28-30, and 32-35 have been amended to further clarify the invention claimed by claims 15-17, 19, 28-30, and 32-35. Claim 18 has been cancelled, and claims 36-41 have been added. It is respectfully submitted, that all claims are now in condition for allowance. The Examiner is invited and encouraged to contact the undersigned attorney of record at (404) 745-2434 if such contact will facilitate a Notice of Allowance. If any additional fees are due, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 11-0855.

Respectfully submitted,  
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